IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:10cv266
(3:09cr130)

MIGUEL AMADOR GUILLON,)
)
Petitioner,)
)
v.) ORDER
)
UNITED STATES OF AMERICA)
)
Respondent.)
_____)

THIS MATTER comes before the Court on initial consideration of Petitioner's

Affidavit in Support of Petition for Writ of Habeas Corpus, filed on June 16, 2010. (Doc. No. 1).

After careful review of record, the Court finds the motion is premature and must be dismissed

without prejudice.

Petitioner was indicted on July 21, 2009, for conspiracy to possess with intent to

distribute cocaine, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A) (Count One), and

possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(b)(1)(A) (Count

Three). (Case No. 3:09cr130, Doc. No. 1: Indictment). On October 15, 2009, Petitioner pled

guilty to the Indictment without a plea agreement. (Case No. 3:09cr130, Doc. No. 39:

Acceptance and Entry of Guilty Plea). A draft Presentence Report (PSR) has been prepared in

anticipation of sentencing and both parties have filed objections to it. (Case No. 3:09cr139, Doc.

No. 49: PSR; Doc. Nos. 50, 54: Objections).

That draft PSR calculates an advisory guidelines range of 87-108 months, which the

defendant seeks to avoid pursuant to 28 U.S.C. § 2255 because his appointed attorney allegedly

told him he would receive no more than 5 years' imprisonment. (Doc. No. 1: Motion at ¶ 16).

Title 28, United States Code, Section 2255 does not apply to a federal prisoner who has not yet

been sentenced. Stantini v. United States, 140 F.3d 424, 427 (2d Cir. 1998). It remains to be

seen whether Petitioner will receive the 5 or fewer years' imprisonment that he seeks. (Doc. No.

1: Motion at ¶ 18).

       IT IS, THEREFORE, ORDERED that Petitioner's motion to vacate is **DISMISSED**

without prejudice as premature and may be re-filed at the appropriate time following sentencing

and any direct appeal.

             Signed: June 21, 2010

Robert J. Conrad, Jr.
Chief United States District Judge